

In the Matter of Merchant Mariner's Document No. Z-287426 and all other Seaman Documents  
Issued to: ANGIOLO M. ALFONSO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1192

ANGIOLO M. ALFONSO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 8 September 1959, an Examiner of the United States Coast Guard at Seattle, Washington suspended on probation, Appellant's seaman documents upon finding him guilty of misconduct. The two specifications allege that while serving as an oiler on board the United States SS OCEAN MAIL under authority of the document above described, on or about 29 May 1959, Appellant wrongfully failed to perform his assigned duties and he wrongfully failed to obey a lawful order of the First Assistant Engineer.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and both specifications.

The Investigating Officer introduced in evidence the testimony of the First Assistant Engineer and entries in the ship's Official Logbook. Appellant testified in his behalf.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of five months on nine months' probation.

FINDINGS OF FACT

On 29 May 1959, Appellant was serving as an oiler on board the United States SS OCEAN MAIL and acting under authority of his Merchant Mariner's Document No. Z-287426 while the ship was in the port of Manila.

Appellant regularly stood the 8 to 12 sea watches. In accordance with standard procedure, he was also assigned to stand watch as an extra oiler if called upon to do so when considerable ship maneuvering was anticipated. Overtime was paid for the latter duty.

About 1745 on 29 May, preparations were being made to get

underway. Appellant was on the main deck when he was told by the First Assistant Engineer to go below to the engine room. Appellant did not obey and the First Assistant told Appellant that he was needed right away for maneuvering. Appellant refused to go below, stating that his conduct could be considered as a refusal to work overtime. The First Assistant found another oiler who went below in place of Appellant.

Appellant has been going to sea for 17 years without any prior record.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the log entries are not in accordance with the law (46 U.S.C. 702) because they were made three or four days after the incident in question; the evidence fails to sustain the specifications; evidence was offered which was not lawfully admissible against Appellant.

APPEARANCE: John Caughlan, Esquire, of Seattle, Washington, of Counsel

### OPINION

The delay in making the log entries in this case is not material because the Examiner based his conclusion that the charge and specifications were proved on the uncontroverted testimony of the First Assistant Engineer. The gist of his testimony as to what he said to Appellant appears in the above findings of fact. In Appellant's testimony, he agreed that this is substantially correct (R. 65) but he stated that he construed this as a request to work overtime rather than as an order (R. 76)

It is my opinion that the evidence in the record supports the conclusion that Appellant was given a lawful order which he failed to obey. By doing this, he also failed to perform his assigned duties as maneuvering oiler. This is clearly established by the testimony of the First Assistant Engineer which constitutes substantial evidence of the two offenses.

Counsel for Appellant has not specified what he considers to be evidence which was not lawfully admissible. I have found no such evidence in the record. The log entries are merely corroborative of the First Assistant's testimony.

Undoubtedly, the order imposed by the Examiner would not have been so lenient except for Appellant's prior unblemished record for 17 years. It is not up to Appellant or any other seaman to question an order given by a ship's officer unless the seaman has good reason to believe that the order is not a lawful one. There is no basis for such a belief in this case.

### ORDER

The order of the Examiner dated at Seattle, Washington, on 8 September 1959, is AFFIRMED.

A.J. Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D.C., this 8th day of September, 1960.